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8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**
10

11 PETITION TO REPEAL OR AMEND) Supreme Court No. R-10-0016
12 ARIZONA SUPREME COURT)
13 RULE 45) **Comment of the State Bar of**
14) **Arizona Regarding Petition to**
15) **Repeal or Amend Arizona**
16) **Supreme Court Rule 45**

17 The State Bar of Arizona ("the State Bar") submits its response to the
18 petition of Eliot M. Held, a member of the Arizona Bar since November 2,
19 2009. Mr. Held filed a petition requesting the Court to repeal Rule 45, which
20 requires all active members in Arizona to acquire at least fifteen (15) hours of
21 CLE in each educational year. In the alternative of a complete repeal, Petitioner
22 requested that newly admitted members of the Bar be exempt from CLE
23 requirements for ten years from their date of admission in Arizona or another
24 bar, or until the member has satisfied all debt incurred for the purposes of
25 attending law school, if any, whichever occurs sooner.

As professionals, lawyers have long been allowed to self-regulate their
profession. Lawyers are permitted to decide who will be allowed to practice
law, what a person must do to earn the right to practice, and what will result in
losing the right to practice law. Recognizing that heavy burden, the Supreme

1 Court of Arizona, among other requirements, enacted a rule in 1989 that
2 requires a member to complete a minimum amount of continuing legal
3 education every year.

4 The decision to enact a mandatory continuing education requirement was
5 not taken lightly or made overnight. For a two-year period beginning in 1986,
6 the Bar carefully examined the mandatory CLE requirements in other
7 jurisdictions and the impact of requiring the same in Arizona. Comments were
8 solicited and received from bar members, the courts, representatives of public
9 lawyers, and law firms ranging from small to large; the call for comments
10 included all counties in Arizona, as well as members residing out of state.

11 The Bar's function in examining and advancing mandatory CLE for all
12 active members stemmed in part from the language of the Court as to the role
13 and organization of the State Bar, currently annotated at Rule 32(a), Ariz. R.
14 Sup. Ct., as follows (in part):

15 1. Establishment of state bar. In order to advance the
16 administration of justice according to law, to aid the courts in carrying
17 on the administration of justice; to provide for the regulation and
18 discipline of persons engaged in the practice of law; *to foster and*
19 *maintain on the part of those engaged in the practice of law high*
20 *ideals of integrity, learning, competence and public service, and high*
21 *standards of conduct; to provide a forum for the discussion of subjects*
22 *pertaining to the practice of law, the science of jurisprudence, and*
23 *law reform; to carry on a continuing program of legal research in*
24 *technical fields of substantive law, practice and procedure, . . . to*
25 *encourage practices that will advance and improve the honor and*
dignity of the legal profession; . . .

(Emphasis added).

Significantly important is that the Bar did not recommend, nor did the
Court adopt, any suggestion that mandatory education be available only through

1 the State Bar. Such a stance would rightly be perceived as an income-
2 generating position rather than in the true spirit of continuing education. In
3 essence, continuing education is for the enhancement of our members'
4 professional skills. The members utilize that educational enrichment of
5 competency and knowledge to better represent the profession as a whole as well
6 as to serve the needs of the client. Continued education in Arizona is required
7 on a yearly basis; this ensures to a large degree that practicing attorneys have
8 received education and training in the latest state-of-the-art policies and
9 procedures instead of placing reliance upon dated education from law school
10 and/or third-hand information from coworkers and associates. The public
11 anticipates that their relationship with a professional, be it an attorney, doctor,
12 therapist, or a nurse, is predicated on the basis that the professional
13 demonstrated initial high standards for licensure and has continued to
14 demonstrate high standards for licensure. The Bar and the Court concluded
15 many years ago, and continue to support the same position, that continuing
16 education is a bona fide aspect of ensuring high standards for continuing
17 licensure as an attorney.¹

18 The petition primarily attacks mandatory continuing legal education on
19 the ground that it is too expensive. As the Petitioner points out, there are a
20 number of ways to meet the continuing legal education requirement. He does
21

22 ¹ As expressed in this Comment, the Bar supports the mandatory continuing education
23 program. The Bar, however, believes it is important periodically to review the program in its
24 entirety to ensure that the program is still relevant and serving its initial purpose. This process
25 of review has resulted in dozens of amendments to Rule 45 over the past two decades.
Incoming Bar President Alan Bayham has indicated his intention to appoint an MCLE review
task force to once again examine the continuing education program in its entirety and to make
any recommendations for its improvement. This type of thorough and methodical review will
allow all members of the State Bar to voice their opinions on the MCLE program in a
thoughtful and deliberative manner before any comprehensive changes are proposed.

1 not acknowledge a number of less expensive and even free ways to meet the
2 requirements. Most State Bar sections provide CLE programs, many of which
3 cost little or nothing for section members. With most section memberships
4 costing an attorney between only \$20-\$40 per year, that can bring the cost of
5 each hour of CLE down to very little. Many members have the opportunity to
6 attend seminars at no cost through their places of employment. Many public
7 and private law firms offer CLE to their attorneys. The courts also offer
8 COJET programs that can serve to satisfy the CLE requirements of the
9 attorney-employees of the courts.

10 The Petitioner also assumes without any explanation that most attorneys
11 attend 'in-person' courses. While many do attend courses in person, a growing
12 number of attorneys regularly attend live or recorded web seminars. Attorneys
13 may also secure CLE credits when serving as a presenter at CLE courses
14 attended by other attorneys; not only are these courses free for the presenters to
15 attend, the presenter earns additional hours of CLE for preparation time of
16 original materials.

17 The Petitioner also argues that lawyers do not need CLE because they do
18 research for pending matters and can read journals and blogs. This is certainly
19 true and, with the exception of the new online resources, lawyers have long
20 taken the responsibility for doing most of their continuing education on their
21 own. Long before there was mandatory CLE, the State Bar of Arizona was
22 providing continuing legal education programs to its members, and its members
23 attended those programs. Attendance at a seminar with topics and focus
24 selected by someone other than the attorney himself provides the opportunity to
25 be introduced to new ways of approaching an issue.

1 The Petitioner also suggests that young lawyers are the least in need of
2 continuing legal education. However, experience has demonstrated that most
3 new lawyers, while having a breadth of knowledge, do not have the depth of
4 knowledge that years of work in an area can provide. In contrast, the presenters
5 at a seminar are those who have that experience and are willing to share that
6 knowledge with others. Further, most new lawyers have never actually written
7 a complaint or filed a pleading; CLE programs provide access to information on
8 the requirements and practices in the community, along with some good
9 examples for the new lawyer to emulate.

10 The value of continuing legal education programs can be seen in a
11 sample of some of the comments from attendees at State Bar programs:

12 “I really enjoyed being able to use my time efficiently in attending
13 this seminar by web video. The speakers were excellent and their
14 humor much appreciated. The time went by very fast and I
15 appreciated the quality and experience of the speakers and their
16 practical insights.” (live by webcast)

17 “All live CLEs should allow web participate (sic), because it saves in
18 time and resources.” (online program)

19 “This seminar had excellent faculty. It was nice to attend from the
20 comfort of my office.” (live by webcast)

21 “Access to these CLEs are very much appreciated, especially being in
22 a rural area.” (online program)

23 “I can’t begin to thank you enough for having this as an avenue for
24 CLE. It is wonderful and I truly appreciate it!” (live by webcast)

25 “Worthwhile - and I saw people here from all over the state whom I
haven't seen in months. Great opportunity to share ideas and
solutions.” (live seminar)

1 "I liked the interaction between the panel and audience. I have a home
2 office and it helps me to meet other attorneys and answer any questions I
3 may have." (live seminar)

4 If lawyers do indeed spend sixty or more hours per year in legal study, as
5 the Petitioner suggests, the requirement that they demonstrate their participation
6 in only fifteen hours should not overwhelm anyone.

7 As a profession, we have a responsibility to the public we serve to ensure
8 that we adequately monitor the members of our profession. One way to
9 accomplish part of that goal is to ask that the members report fifteen of the
10 hours they have spent studying in the prior year and staying current in the law.
11 This requirement is not untoward, nor is the requirement directed only to
12 attorneys. Continuing education is, in fact, a long-established requirement for
13 many professions in which the skill and education level for the provision of
14 services to clients and customers is crucial. Without continuing education
15 requirements, skill sets, knowledge and competencies may not be current and
16 contemporary. Accountants, doctors, teachers, and police officers all have
17 continuing education requirements that are enforced by their supervising
18 organizations. A review of a few other professions, licensed in Arizona and/or
19 nationally, indicated the following continuing education requirements:

20	Accountant	80 hours every two years
21	Psychologist	60 hours every two years
22	Home Inspector	24 hours per year
23	Process Server	10 hours per year
24	Real Estate Broker (CA)	45 hours every five years
25	Emergency Physician	150 hours every three years
	Pharmacist	30 hours every two years
	Nurse (TX)	20 hours every two years
	Nurse (CA)	30 hours every two years
	Real Estate Agent/Broker	24 hours every two years

1	Massage Therapist	24 hours every two years
2	Pest Control Technician	6 hours per year
3	Occupational Therapist	20 hours every two years
3	Dentist	72 hours every three years

4 With respect to attorneys, the website of the ABA (American Bar
5 Association) Center for Continuing Legal Education indicates that as of mid-
6 year 2009, forty-seven jurisdictions required their members to obtain continuing
7 legal education. The number of required hours varies from state to state, some
8 more than Arizona, some the same as Arizona, and some less than Arizona.
9 The reporting period and time period to acquire the hours also vary between
10 jurisdictions from yearly reporting, such as Arizona, to reporting every three
11 years. However, the bottom line remains that almost every jurisdiction includes
12 continuing education as a lawyer's obligation to the profession and their clients.

13 Maryland and New Jersey just recently enacted mandatory education
14 requirements, in October 2009 and January 2010 respectively. Their decision to
15 join the overwhelming majority of jurisdictions that already mandate continuing
16 education could be rationalized that it was for the furtherance of the protection
17 of the public and to ensure lawyers' continuing education, integrity and skill
18 development.

19 Of interest is that New Jersey's recent announcement of mandatory
20 continuing education is posted on the Internet, and elicited these comments:

21 "It's about time. So many lawyers still rely on what they learned in law
22 school. I have seen so much bad lawyering in past few years, I'm sure I
23 wasn't alone."

24 "Licensed Electricians have had to take CE every three years since the
25 late 80's (the Electrical Code is updated every 3 years). Law changes
every day."

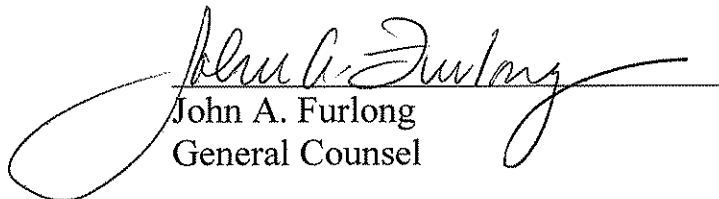
1 "NJ has a excellent system of CLE classes already in place (Institute
2 for CLE in New Brunswick) and it is successful - even though it is
3 voluntary. Mandatory CLE sets a common standard on what is
4 minimally required. As a lawyer, I am 100% behind this. We have
5 had Mandatory CLE in NY for about 8 years now."

6 Arizona is certainly not the lone state requiring mandatory continuing
7 education. It is not for the benefit of CLE providers, nor was it enacted to fluff
8 the purses of State Bars, Courts and third-party providers. The intent of
9 continuing education is described by the term itself – continuing education – for
10 the benefit of members and for the clients they serve.

11 Although we can all sympathize with a young lawyer with mountains of
12 debt, the solution is not to eliminate MCLE. If the cost of MCLE is beyond the
13 means of the Petitioner, he can certainly work with the State Bar and others to
14 find ways to reduce the financial burden.

15 The State Bar therefore requests that this Court deny Petitioner's request
16 in whole and in part, and affirm that the mandatory continuing legal education
17 requirements, as annotated in Rule 45, Ariz. R. Sup. Ct., remain in effect.

18 RESPECTFULLY SUBMITTED this 12th day of May, 2010.

19 
20 John A. Furlong
21 General Counsel

22 Electronic copy filed with the
23 Clerk of the Supreme Court of
24 Arizona this 12th day of May, 2010.

1 A copy was mailed to:

2 Eliot M. Held, Esquire

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4 Las Vegas, Nevada 89019

5 this 12th day of May, 2010.

6
7 By: Kathleen Lundgren